

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

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**M.A.C.M.A.No.919 of 2009**

**JUDGMENT:**

This appeal is filed by the claimant challenging the judgment and award, dated 19.11.2008 passed in O.P.No.377 of 2006 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum- XXII Additional Chief Judge, at City Criminal Courts, Hyderabad, whereby and where under the Tribunal awarded compensation of Rs.48,000/- as against the claim of Rs.2,50,000/-.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to file the present appeal, in brief, are as follows:

On 19.08.2004 when the petitioner was proceeding to Mannoor Village from Achampet on a scooter bearing No.AP 12A 9030, when he reached near Bolgatpally village, the driver of the TATA sumo bearing No.AP 22D 9690 had driven the same in a rash and negligent manner and hit the scooter in an opposite direction, due to which the petitioner sustained grievous injuries. The Station House Officer, Achampet Police Station, registered a case in Crime No.73 of 2004 under Section 337 IPC against the driver of the bus. Due to the accident, the petitioner sustained fracture to pelvis bone, sacrum and other parts of the body and took treatment in Government Hospital, Achampet and Siddardha Multi Speciality Hospital, Hyderabad. The petitioner also took treatment in Satya Kidney Centre and underwent operation on 27.07.2004. The petitioner spent an amount of Rs.50,000/- towards medicines and treatment. By the time of accident, the petitioner was aged about 31 years and used to earn Rs.5,500/- per month. Due to injuries, the petitioner could not attend to his work for a long time, thereby, he lost his income. The TATA sumo bearing

No.AP 22-D-9690, which belongs to first respondent, was insured with the second respondent as on the date of accident. The present petition is filed claiming compensation of Rs.2,50,000/- against respondents 1 and 2.

4. The first respondent remained *exparte*. The second respondent filed counter denying all the material averments made in the petition *inter alia* contending that the amount of compensation claimed by the petitioner was on higher side. It is the duty of the petitioner to prove that the driver of the TATA sumo was having valid and affective driving licence as on the date of accident. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the petitioner had sustained injuries on 18.08.2014 due to rash and negligent driving of TATA sumo No.AP 22D 9690?
2. Whether the petitioner is entitled to any compensation? If so against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.14 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the TATA Sumo and allowed the petition in part by awarding a compensation of Rs.48,000/- against the claim of Rs.2,50,000/-.

8. Being aggrieved by the judgment and award passed by the

Tribunal, the petitioner-claimant preferred the present appeal.

9. Heard Sri M.Krishna Reddy, the learned counsel for the appellant/claimant and Sri T.Harinadh Gupta, learned counsel for the second respondent.

10. Learned counsel for the claimant submitted that the Tribunal has not rightly considered Exs.A4 and A14 and awarded meagre amount of compensation under different heads. He further submitted that the Tribunal failed to consider that the petitioner incurred 30% disability due to fractures. He further submitted that the amount of compensation awarded by the Tribunal under various heads is not just and reasonable. Per contra, learned counsel for the second respondent submitted that basing on the material available on record, the Tribunal awarded just and reasonable compensation. He further submitted that there are no grounds much less reasonable grounds to interfere with the judgment and award of the Tribunal.

11. Basing on the rival contentions made by the parties, the point that arises for consideration in this appeal is

Whether the Tribunal has awarded just and reasonable compensation or not?

12. As per the findings recorded by the Tribunal, the accident occurred due to rash and negligent driving of the driver of the TATA sumo, which resulted injuries to the petitioner. The finding recorded by the Tribunal on issue No.1 became final in view of non-filing of the appeal or cross-objections by the respondents. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Hence, this Court is of the considered view that the accident occurred due to the rash and negligent driving of the driver of the TATA sumo.

13. The oral testimony of P.W.1 coupled with Ex.A3 reveals the petitioner sustained fracture to sacrum, one grievous injury and one

simple injury. The Tribunal awarded an amount of Rs.24,000/- towards pain and sufferings. The amount of compensation awarded by the Tribunal under the head pain and suffering is just and reasonable. The Tribunal awarded an amount of Rs.5,000/- towards medicines. The oral testimony of P.W.1 coupled with Exs.A9 and A10 reveals that the petitioner spent nearly an amount of Rs.26,500/- towards medicines and treatment. Admittedly, the petitioner took treatment in private hospitals and underwent operation. Merely because the concerned doctor was not examined, that itself is not a sufficient ground to discard the medical bills in each and every case. Even otherwise the Tribunal has to take into consideration the nature of injuries sustained by the petitioner while awarding amount under medicines and treatment. Hence, I am of the view that granting of Rs.26,000/- towards medicines is just and reasonable instead of Rs.5000/- granted by the Tribunal. The Tribunal rightly awarded an amount of Rs.5,000/- towards extra nourishment. The Tribunal awarded an amount of Rs.4,000/- towards loss of income. The petitioner sustained fracture to pelvis bone and sacrum. A perusal of the record reveals that the petitioner took treatment for long time in Hyderabad city. Due to fractures, the petitioner might not have attended to his work for a period of five months including the treatment period. Hence, I am inclined to award an amount of Rs.15,000/- towards loss of income instead of Rs.4000/- as awarded by the Tribunal. As per the oral testimony of P.W.2, the petitioner incurred 30% disability. The fact remains that the petitioner did not take treatment under the supervision of P.W.2. If really the petitioner incurred 30% disability, what prevented P.W.2 to issue disability certificate. For one reason or other the petitioner did not approach the medical board to obtain the disability certificate to substantiate his claim. In such circumstances, it is not safe to place reliance on the oral testimony of P.W.2. Even as per the testimony of P.W.2, the petitioner is facing difficulty in sit and squat. Even assuming but not admitting

that the petitioner incurred some sort of disability, the same does not affect the earning capacity of the petitioner. Due to stiffness to pelvis bone, the petitioner may not enjoying life like other persons. By the time of accident, the petitioner was aged about 30 years. The petitioner has to suffer throughout his life to certain extent. Hence, I am inclined to award an amount of Rs.20,000/- towards loss of future amenities instead of Rs.10,000/- as awarded by the Tribunal. The compensation awarded under various heads is as follows:

|                          |              |
|--------------------------|--------------|
| Pain and suffering       | Rs. 24,000/- |
| Medicines and Treatment  | Rs. 26,500/- |
| Extra nourishment        | Rs. 5,000/-  |
| Loss of earnings         | Rs. 15,000/- |
| Loss of future amenities | Rs. 20,000/- |
|                          | -----        |
| Total                    | Rs. 90,500/- |
|                          | -----        |

The petitioners are also entitled for interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. As rightly pointed out by the learned counsel for the claimant, the compensation awarded by the Tribunal is not just and reasonable. Hence, point is answered in favour of claimant and against the respondent Corporation.

18. Accordingly, M.A.C.M.A.No.919 of 2009 is allowed in part by enhancing the compensation from Rs.48,000/- to Rs.90,500/- and by directing the respondents 1 and 2 jointly and severally to deposit the amount within two months from the date of receipt of copy of this order with interest at the rate of 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. Both parties have to bear their own costs. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

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**T.SUNIL CHOWDARY, J**

11<sup>th</sup> March, 2015  
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